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AUG 16 2007

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

P.M. _____
INTIME A.M. _____

ZYPREXA PRODUCTS
LIABILITY LITIGATION

: 04-md-1596 (JBW)(RLM)

~~06-CV-1720~~

: U.S. Courthouse
Brooklyn, N.Y.

August 14, 2007
9:30 a.m.

BEFORE:

HONORABLE JACK B. WEINSTEIN
United States District Judge

APPEARANCES:

For PSC II:

MILBERG WEISS LLP
One Pennsylvania Plaza
New York, New York 10038
BY: MELVYN I. WEISS, ESQ.
JAMES M. SHAUGHNESSY, ESQ.

FIBICH, HAMPTON & LEEBRON, LLP
1401 McKinney, Suite 1800
Five Houston Center
Houston, Texas 77010
BY: TOMMY FIBICH

AUDET & PARTNERS
221 Main Street
San Francisco, California 94105
BY: WILLIAM M. AUDET, ESQ.

1 For Mulligan Plfs: THE MULLIGAN LAW FIRM
2 2911 Turtle Creek Blvd.
3 Dallas, Texas 75219
4 BY: ERIC N. ROBERSON, ESQ.

5 For Eli Lilly: PEPPER HAMILTON, LLP
6 420 Lexington Avenue
7 New York, New York 10170
8 BY: KENNETH J. KING, ESQ.

9
10 Also Present: PETER H. WOODIN, ESQ.
11 SPECIAL MASTER
12 280 Park Avenue
13 New York, New York 10017

14 Appearances Via Telephone:

15 HOWARD NATIONS
16 SEAN FAHEY
17 MARK BURTON
18 BLAIR HAHN
19 TIM DAVIS
20 KATHRYN HARRINGTON
21 RONALD ROSENKRANZ
22 KRISTIN GIAQUINTA
23 ERIC TERRY

24
25 Court Reporter: Holly Driscoll, CSR
225 Cadman Plaza East
Brooklyn, New York 11201
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1 THE COURT: Call the case please.

2 THE CLERK: Civil cause for motion,

3 In Re: Zyprexa Litigation.

4 THE COURT: Good morning, everybody.

5 We're on the phone with a number of people and
6 that's why we've been delayed making the connections.

7 I think our main business for today is considering
8 the order of July 31st, 2007 which is in the form of a
9 recommendation from Peter H. Woodin, the special discovery
10 master, who is here today. Then we may have some related
11 questions.

12 Who wishes to be heard?

13 VOICE ON THE PHONE: I can't hear the Judge, I don't
14 know if it is just me or not.

15 VOICE ON THE PHONE: I can't hear either.

16 THE COURT: Can you hear me now?

17 VOICE ON THE PHONE: Yes, sir.

18 VOICE ON THE PHONE: Yes, sir, thank you.

19 THE COURT: Okay. Who wishes to be heard?

20 MR. FIBICH: Your Honor, I'm Tommy Fibich on behalf
21 of the PSC and we, of course, support the recommendation of
22 Special Master Woodin. He has conducted hearings on this
23 particular recommendation, we've had numerous telephone
24 conferences on it. The Court in its order indicated that
25 there may be a necessity for an evidentiary hearing. If the

1 Court would like to hear evidence on that, I'm prepared to
2 call Mr. Audet who is a member, like myself, on the Executive
3 Committee of what we now call PSC II. I don't know if the
4 Court feels there's a necessity for that or not but we're
5 prepared to go forward with that if the Court would like that
6 in the record.

7 THE COURT: How long will that take?

8 MR. FIBICH: Well, I would estimate 20 minutes, Your
9 Honor.

10 THE COURT: I think it probably would be useful to
11 make a record.

12 MR. FIBICH: Okay.

13 If it please the Court then, Your Honor, I'd like to
14 call Mr. William Audet.

15 THE COURT: Does anybody wish him sworn?

16 (No response.)

17 THE COURT: No.

18 Nobody wishing him sworn. He'll make a statement,
19 not under oath as a courtesy, but not because we don't need to
20 credit his testimony.

21 MR. FIBICH: May I proceed, Your Honor?

22 THE COURT: Please.

23 W I L L I A M M. A U D E T, E S Q., having been called as
24 a witness, testified as follows:

25 DIRECT EXAMINATION

Audet - direct - Fibich

5

1 BY MR. FIBICH:

2 Q State your name for the record, sir.

3 A William Michael Audet, A U D E T.

4 Q Mr. Audet, are you a licensed attorney?

5 A Yes, I am. I'm licensed in California and I'm also
6 licensed in Wisconsin. I'm currently inactive in Wisconsin.

7 Q And would you briefly describe your educational
8 background as far as your law school training and your work
9 history?

10 A In 1984 I graduated from Golden Gate University School of
11 Law. After that I was accepted by the University of Wisconsin
12 for an LLM, which was a clinical instructor program plus a
13 teaching program plus a degree program for teaching in law
14 school. I graduated and received my LLM in 1987.

15 From there I clerked for a year and a half for the
16 Ninth Circuit Court of Appeal. After that I was honored to be
17 Judge Smith -- Fern Smith's first law clerk, United States
18 District Court for the Northern District of California. At
19 that time I met Ms. Giangarra who previously I believe worked
20 for Judge Weinstein.

21 I then clerked -- I was lucky enough, Judge
22 Zirpoli was looking for a clerk and it was his last year and I
23 served as his law clerk for a year. After that I secured a
24 position at a law firm called Lieff, Cabraser & Heimann and I
25 was there and worked directly with Elizabeth Cabraser and I

Audet - direct - Fibich

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1 was there for eight years.

2 After that, it was in 1996 I believe I worked and
3 left that firm and became a partner within a short time frame
4 at a firm called Alexander, Hawes & Audet. In January of this
5 year I started my own firm called Audet & Partners.

6 Q Mr. Audet, do you specialize in any particular area in
7 the field of law?

8 A I specialize in class actions and what I'll call mass
9 tort actions.

10 Q And you've published also, have you not?

11 A I have published. I've had a few law journals published.
12 I also have a yearly book called Handling Federal Discovery in
13 which I basically provide to practitioners, state
14 practitioners how to work in federal court on discovery
15 matters. It is a book that I have to rewrite every year and
16 we sell supplements. Judge Smith is a contributor as well to
17 that book.

18 Q How did you first become involved in the litigation that
19 we're here about today?

20 A I got involved in Zyprexa in the end of -- I believe it
21 was December of '05. I believe I filed my first case after we
22 were contacted, and I'm not too sure, by a number of
23 individuals who had ingested Zyprexa. We had filed some cases
24 and in a short time frame I was advised that there was an
25 existing PSC, I believe it was called PSC at the time, I'll

Audet - direct - Fibich

7

1 call it PSC I because there was a changeover later on, but I
2 was invited to start working in January I believe it was of
3 '06 with some of the PSC members. I met with the leadership
4 of the PSC including with the people sitting here today,
5 Mr. Weiss, Mr. Fibich in I believe January, February, March to
6 start working on the case, learn what the case was about.

7 Q And did you later receive an appointment to become a
8 member of what we now call PSC II?

9 A Yes, at some point one of the PSC members indicated that
10 there was going to be a change of the PSC and I was invited
11 by, again, the leadership of the PSC I to apply for and I
12 believe in March of -- no, excuse me -- January, February,
13 March, April, May -- in May, I believe it was the 5th or 6th I
14 was honored enough to be appointed by this Court to serve on
15 the PSC.

16 Q And within the PSC are you on the Executive Committee
17 with myself and Mr. Weiss?

18 A Yes, I am. After I was appointed, I guess we were
19 elected, I don't really know now, we were selected by the PSC
20 members to serve on the PSC in an Executive Committee
21 capacity.

22 Q Since your appointment as a member of the Executive
23 Committee of PSC II, how would you describe your involvement
24 to the Court with respect to the Zyprexa matters pending in
25 this MDL?

Audet - direct - Fibich

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1 A I would say without exaggeration my involvement in '06
2 was probably daily involved with either a phone call, staff
3 meeting, Executive Committee meeting, PSC meeting or meeting
4 with other PSC members in different parts of the country.

5 Q For the record, all actions of the PSC before this Court,
6 before Special Master Woodin and with respect to matters that
7 we have been fortunate enough to work out with Lilly's counsel
8 have been through the Executive Committee; is that correct?

9 A That's correct.

10 Q Would you describe for the Court generally some of the
11 matters that have taken up the time of the PSC in dealing with
12 the matters and, in particular, contrast the work of PSC I
13 with PSC II?

14 A I would say after a thorough review of what PSC I had
15 done I can testify as follows, that the PSC I had gathered
16 millions of pages of documents and had reviewed a number of
17 those documents to cull out what I'll call hot documents.
18 They also had conducted, based on my review of those
19 depositions, a number of what I'll call 30(b)(6) depositions
20 which are corporate designee depositions. They did some other
21 work, of course, but essentially during the hand-off process
22 it was clear to Executive Committee members plus PSC members
23 that from mid '06 to the end of '06 that we had to focus on
24 taking liability depositions.

25 Q Prior to the formation of PSC II had any liability

Audet - direct - Fibich

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1 depositions been taken?

2 A I don't believe so. I believe all of the, quote unquote,
3 liability depositions and direct testimony with corporate
4 individuals were individuals not designated through 30(b)(6)
5 but individuals we decided to take after reviewing millions of
6 pages of documents.

7 Q And during the period up until December 31st of 2006 was
8 The Mulligan Firm involved in any way with any of the matters
9 that were attendant to PSC matters?

10 A I don't recall any time in which The Mulligan Firm was
11 directly involved with any of the PSC meetings or
12 contributions with respect to depositions and the like.

13 Q Are you aware of any discovery that they did through the
14 PSC insofar as looking at documents in the depository that was
15 set up by PSC II?

16 A I don't believe they've ever accessed the depository, I
17 could be wrong, I'm just going on my understanding, never
18 accessed the depository that was initially located in Denver,
19 then moved to South Carolina.

20 Q To your knowledge, has The Mulligan Firm participated in
21 any depositions establishing the liability case, as the
22 plaintiffs see it, against Eli Lilly and Company?

23 A I don't believe they've taken any depositions along those
24 lines. I can't speak to 100 percent whether or not they
25 showed up at some of the depositions. I don't believe from

Audet - direct - Fibich

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1 the depositions I read, and I believe I read all of the
2 depositions conducted by the PSC members, I don't believe they
3 did take any -- they undertook to question any of the
4 deponents.

5 Q And with respect to participation on behalf of plaintiffs
6 through the PSC, have they participated in any way with
7 respect to motion practice, discovery issues, privilege logs
8 or anything else to your knowledge?

9 A Not -- as I sit here, I can't recall anything along those
10 lines.

11 Q And you are the most active member of the Executive
12 Committee of the Plaintiffs' Steering Committee; is that
13 correct?

14 A If someone is more active than me, I'd be shocked given
15 my 12 hour a day commitment to this case.

16 Q Let's look at it from a contrary position; are you aware
17 of actions that the Plaintiffs' Steering Committee has taken
18 with respect to matters before this Court or matters before
19 Special Master Woodin that have benefited The Mulligan Firm
20 insofar as the representation of their plaintiffs?

21 A Well, I'll say this, and I guess this is more of a legal
22 conclusion, but I believe everything the PSC did and Executive
23 Committee did benefited anybody with cases in any part of the
24 country with respect to Zyprexa. I believe as a result of the
25 PSC's aggressive work, people were able to settle their cases.

Audet - direct - Fibich

11

1 I don't believe had we not pursued the cases we had there
2 would have been any settlements for anybody in the country
3 including people in state court.

4 Q Can you give the Court --

5 MR. ROBERSON: I will object as a legal conclusion.

6 THE COURT: Overruled.

7 Q Can you give the Court --

8 THE COURT: I consider that factual.

9 Q Can you give the Court an example of just say one motion
10 where the PSC prevailed that you think inured to the benefit
11 of Mr. Mulligan's firm and its clients?

12 A I can name probably ten but I'll name one that sticks to
13 my mind, the Lone Pine order that I was very heavily involved
14 with briefing along with other members of the Executive
15 Committee including Jim Shaughnessy and Mr. Fibich. That was
16 a big important issue with respect to whether or not
17 plaintiffs would have to give case specific expert reports
18 early on in the process and that took a lot of briefing and a
19 lot of persuading to hopefully -- there has been no ruling but
20 no ruling has been a good ruling for us in terms that no
21 plaintiff in the country has had to give a so-called Lone Pine
22 expert opinion on any of their cases.

23 THE COURT: Since the record may go up to the Court
24 of Appeals, perhaps you ought to explain Lone Pine for its
25 benefit.

Audet - direct - Fibich

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1 THE WITNESS: Lone Pine is what I'll call somewhat
2 of a wacky theory that defendants try to get judges to agree
3 to and essentially Lone Pine requires that at a certain
4 point --

5 MR. KING: I object to that characterization.

6 THE WITNESS: I didn't say wacky defendants but it
7 is a theory in which some cases have forced plaintiffs to
8 prove up experts early on in the process, i.e. specifically
9 specific causation with respect to the product and the actual
10 injury and it is very burdensome, very cumbersome and very
11 expensive for plaintiffs to have to undertake such a process.

12 I can give you other examples if you want.

13 Q Well, if the PSC had not been persuasive with respect to
14 the plaintiffs' position on that, would that have cost The
15 Mulligan Firm time and money in responding to such an order?

16 A I believe it would have cost every plaintiff's attorney
17 with cases throughout the United States time and money
18 responding to that.

19 Q Mr. Audet, we have had the benefit of Special Master
20 Peter Woodin to assist us throughout this litigation, correct?

21 A Correct.

22 Q And there have been numerous hearings before Special
23 Master Woodin?

24 A That's correct, I would say mid-'06, again, after a
25 meeting with the Executive Committee, I recall a conference

Audet - direct - Fibich

13

1 call in which Mr. Weiss was on and, Tom, you were on and in
2 which I suggested and it was agreed that we would start weekly
3 phone calls with Special Master Woodin given what seemed to be
4 the Court's inclination to try to have these cases tried in
5 the fall of '06; as a result, we actually had weekly calls
6 with Special Master Woodin on every discovery issue that any
7 plaintiff had and the PSC had before the Special Master. I
8 would say we at times we bothered the Special Master enough
9 that we would have two calls a week. There were some times
10 with what I'll urgent matters that had to be quickly briefed
11 and those matters weren't on the weekly call because of the
12 urgency, I would say we had at least ten to twenty of those
13 urgent matters, so I would say we were bothering the Special
14 Master at least twice a week throughout this process I would
15 say from mid-'06.

16 Q And the Special Master, for the record, has been
17 particularly accommodating to all the parties in this
18 litigation, correct?

19 A Yeah, one thing the Special Master has been good with
20 requiring us to do, give notice to people, make sure that
21 everybody gets a chance to speak if they want to speak with
22 respect to any issue at any time and, you know, my opinion is
23 his orders have been thoughtful, sometimes I disagreed with
24 them, but they have been very thoughtful and thorough and
25 helped -- actually helped the litigation move.

Audet - direct - Fibich

14

1 Q Has The Mulligan Firm sought the help of the Special
2 Master that was appointed by this Court?

3 A I believe there's at least one if not two hearings, one I
4 believe I was on, in which I know there was an issue with
5 respect The Mulligan Law Firm's deficient plaintiff fact
6 sheets that were due. The Court had issued an order requiring
7 everybody with a case in the MDL to respond to and provide
8 discovery to Eli Lilly consistent with other MDLs and it was
9 what's called a plaintiff fact sheet which is in lieu of
10 interrogatories and discovery requests and I believe there was
11 at least one hearing, if not two, in which The Mulligan Firm
12 needed additional time, had a significant caseload, I don't
13 believe I briefed the issue but I believe we had no objection
14 to it and I believe we -- I may have even said something in
15 the record that I supported it given how onerous the fact
16 sheets were but I know there was at least one hearing I
17 attended, there may have been more.

18 Q And there were other matters that The Mulligan Law Firm
19 raised before Special Master Woodin, correct?

20 A Yeah, I believe in addition to -- I believe there has
21 been other discovery hearings, most of them have been focused
22 on the plaintiff fact sheet obligations I believe, though
23 there was at least -- there's been at least five, maybe six
24 hearings total, those hearings would also include assessment
25 issues, they didn't just include discovery issues, I want to

Audet - direct - Fibich

15

1 make the record clear on that.

2 Q Five or six hearings in which The Mulligan Firm has
3 participated?

4 A Correct.

5 Q Who pays the Special Master for his time on these
6 matters?

7 A Well, the PSC does and if the PSC is out of money, it is
8 generally the Executive Committee, and then if the Executive
9 Committee doesn't come up with it, generally Mel, Mr. Weiss
10 will make sure the bills get paid but the bills get paid from
11 the treasury that the PSC has established.

12 Q Has The Mulligan Firm ever paid for any of the time of
13 the Special Master that they have utilized to their benefit?

14 A I couldn't testify to that except to say as far as I
15 know, no, but the treasury would know but I don't believe so.
16 I don't believe we ever asked either, for the record, I want
17 to make the record clear, I don't believe we ever asked
18 anybody to chip in who wasn't a PSC member.

19 Q Now, Mr. Audet, you have filed a declaration in this
20 Court, have you not?

21 A I believe I filed a number of declarations.

22 Q With respect to the assessment of the three percent
23 assessment?

24 A I believe I filed one with this Court as well although it
25 may be just before Special Master Woodin so I don't know --

Audet - direct - Fibich

16

1 Q Do you have a copy of the order?

2 A I have a copy of my declaration, unfortunately it is the
3 unsigned version so I'm hesitant to turn it over.

4 THE COURT: Sign it.

5 THE WITNESS: Okay.

6 THE COURT: Make it an exhibit in your testimony.

7 (Pause.)

8 THE WITNESS: Thank you, Your Honor.

9 What is today's date?

10 MR. FIBICH: The 14th.

11 THE WITNESS: I have just re-signed it. I believe
12 this is a pretty -- either close to or similar to what I filed
13 before Special Master Woodin. I believe a copy of it was
14 filed with this Court. I know a copy of it was provided to
15 anybody who had objected to the settlement -- excuse me, not
16 to the settlement, to the assessment issue.

17 Q Mr. Audet, what you are referring to is what is entitled
18 Declaration of William M. Audet in Support of PSC II's Motion
19 For a Three Percent Set Aside; is that correct?

20 A Correct.

21 MR. FIBICH: I'm going to designate this, Your
22 Honor, for the record as PSC-1 and --

23 THE COURT: PSC II-1.

24 MR. FIBICH: PSC II Exhibit 1.

25 Q And Mr. Audet, this declaration contains the matters

Audet - direct - Fibich

17

1 which you believe the PSC has done which justifies a three
2 percent assessment; is that correct?

3 A Correct. Just so you know, originally it was actually 30
4 pages long and one of my associates meekly came up and said
5 you're going to bore the Court, so I spent a lot of time
6 summarizing what was in there, and he said nobody is going to
7 read it if it is 30 pages so I cut it down to I believe six.

8 MR. FIBICH: Your Honor, at this time I would offer
9 PSC II's Exhibit 1 as part of the record.

10 THE COURT: Any objection?

11 (Pause.)

12 THE COURT: Hello. Those of you who are on the
13 phone, I can hear you rattling papers and coughing, could you
14 see if you can avoid that please.

15 MR. ROBERSON: Can I ask a question?

16 THE COURT: No, you can do that on cross.

17 It is admitted subject to motion to strike.

18 MR. KING: May I take a look at it briefly?

19 THE COURT: Yes.

20 Proceed.

21 Q Mr. Audet, were you asked to obtain an estimate of the
22 time incurred by members of the PSC II that inured to the
23 common benefit of all plaintiffs?

24 A Yes, I believe at one of the hearings before Special
25 Master Woodin in which the issue of the exact amount of the

Audet - direct - Fibich

18

1 assessment was asked -- was raised, Special Master Woodin
2 asked me to ask all plaintiffs' counsel PSC members to provide
3 me as quickly as possible an estimate, a rough estimate of
4 their time. I instructed my secretary to ask all the PSC
5 members to gather time in a very short time and their expenses
6 and I believe within I'd say two, maybe three weeks we
7 received essentially everyone's time with the exception of one
8 firm, I just want to note for the record, Mr. Sobol's firm.

9 Q Mr. Audet, you've had discussions with The Mulligan Firm
10 about their objections to the order which we're requesting the
11 Court sign; is that correct?

12 A That is correct, although I believe those were in a
13 settlement context but we agreed they would be confidential.

14 Q And what is your understanding as to the number of cases
15 The Mulligan Firm has?

16 A I, actually not based on the calls, I think based on
17 their recent submission, I believe it is in excess of 2,000,
18 maybe 3,000. It is very hard to tell.

19 Q That they have resolved through settlement?

20 A Correct.

21 Q And do they also have, to your knowledge, a number of
22 other cases in which they have a tolling agreement?

23 A I believe, again, there was a footnote, in one of the
24 documents I believe there was some reference to tolling. I
25 believe a number of firms have tolling agreements and I

Audet - cross - Roberson

19

1 believe The Mulligan Firm has them as well.

2 Q And that would be in addition to the 2 to 3,000 cases you
3 think they've resolved?

4 A Again, I'm not the best person, I would hate to guess,
5 I'm sorry. I believe so, I don't know.

6 MR. FIBICH: Your Honor, at this time I'd pass the
7 witness.

8 THE COURT: Any cross-examination?

9 MR. ROBERSON: If I may, Your Honor?

10 THE COURT: Yes.

11 Give your name so the people on the phone will know
12 who is speaking please.

13 MR. ROBERSON: I'll move around so we can be --

14 CROSS-EXAMINATION

15 BY MR. ROBERSON:

16 Q Good morning, Mr. Audet.

17 A Good morning.

18 THE COURT: Give your name so people will know who
19 is speaking.

20 MR. ROBERSON: Eric Roberson, plaintiffs' counsel
21 for the Mulligan plaintiffs.

22 Q Good morning, Mr. Audet.

23 A Good morning.

24 Q I want to ask you a few questions, if I may.

25 The bill that you have prepared in regards to the

Audet - cross - Roberson

20

1 itemization, was that work itemized as to when that work was
2 done?

3 A That's a good question. I believe pursuant to Special
4 Master Woodin's request we limited the time as follows; one,
5 if you were a PSC I member, you could not send in any time
6 that you asked for payment from PSC I's settlement. So, for
7 example, Mr. Weiss' firm was a member of the PSC I, his firm
8 only sent us post-PSC I time submission. And, again, pursuant
9 to Special Master Woodin's request, the time that we collected
10 stopped as of December 31st, 2006. There was a significant
11 amount of time after that but we didn't gather that, I was not
12 asked to get that.

13 Q So, the 10.1 million dollars estimate that is the basis
14 for the three percent set aside order, it is your testimony
15 that that only includes PSC II work through December 31st of
16 2006?

17 A Yes, it excludes -- again, I'm a PSC I member so I would
18 go -- excuse me, I was not a PSC I member so I have no PSC I
19 time but, yes, I believe the answer to that is yes.

20 Q So, would you agree then in regards to the vast majority
21 of settlements that occurred on or about December 31st, 2006
22 or the first week of 2007 that the PSC II is not submitting or
23 seeking for those cases to reimburse PSC II for work done
24 related to cases that were not part of the mass settlement
25 protocol?

Audet - cross - Roberson

21

1 A I'm sorry, could you rephrase that.

2 Q All right. Let me lay some foundation for the facts
3 first.

4 A Yeah.

5 Q You agree there was a large number of cases from The
6 Mulligan Firm and other firms that settled in the last week of
7 2006 and the first week of 2007?

8 A Based on published reports, yes.

9 Q And you understand that one of the objections that The
10 Mulligan Law Firm made is that there could be no benefit done
11 to cases that were subject to a settlement protocol after that
12 settlement protocol was entered, do you remember that
13 objection being made at the Special Master's hearing?

14 A Yeah, I do remember and I believe that's why we ended up,
15 I think Special Master Woodin's view was that issue has been
16 raised, that's why we only gathered it as of December '06.

17 Q And so, it is the PSC II's position that work done after
18 the mass settlement protocols were entered into, it is not
19 going to be billed to cases that are subject to tentative
20 settlements under those mass protocols?

21 A Cases -- your cases?

22 Q Yeah. For example, any work that you did two months
23 after we entered the settlement protocol, is the PSC II going
24 to attempt to bill The Mulligan Law Firm for that work?

25 A We don't really bill you for work, we're asking for a

Audet - cross - Roberson

22

1 common fund assessment but if we're on the same page, I don't
2 believe so. I believe the position is that -- but you also,
3 just so the record is clear, not all cases settled in
4 December, my firm didn't settle cases until a few months ago,
5 I believe Mr. Miller's firm's cases weren't settled and so
6 there may be additional time that people will seek
7 compensation out of that amount, I don't know, that will be a
8 Executive Committee decision that I don't think we've even
9 gotten there. We've had -- just so the record is clear,
10 pursuant to the Special Master's recommendation and order,
11 that decision will be Executive Committee member made in terms
12 of who gets compensated what and I have had no discussions
13 with anybody about that. My focus has been on just getting
14 the three percent order implemented.

15 THE COURT: Let me tell you what the position of the
16 Court is, subject to hearing from all concerned. The fund to
17 be made up of this three percent, one and a half percent from
18 the fee and one and a half percent from the plaintiffs'
19 recovery, goes into a common fund. I expect out of that
20 common fund will be paid the work of PSC II up to the end of
21 their labors. Whether the common fund will be sufficient for
22 the post-December 31st, 2006 work, I don't know, I haven't
23 seen the figures, but I see no reason why, as the record now
24 stands, PSC II personnel should not be paid for their labor up
25 to the moment they are disbanded if there are sufficient

Audet - cross - Roberson

23

1 funds. So, I'm somewhat surprised by your testimony.

2 THE WITNESS: I'm -- I was not saying that we
3 weren't -- as a matter of fact, my firm spent a lot of time
4 and energy after January, I'm just saying what we gathered so
5 far.

6 THE COURT: Well, are you going to ask for
7 compensation out of the fund for post-December 31st work?

8 THE WITNESS: If the Court allows it, of course, I
9 will.

10 THE COURT: No, that wasn't what I asked you. I
11 asked you are you going to ask for compensation?

12 THE WITNESS: Yes, I'm going to gather everybody's
13 time and records, I believe we will.

14 THE COURT: Well, the answer is yes or no.

15 THE WITNESS: Yes. Yes, Your Honor.

16 THE COURT: All right.

17 Proceed with the cross please.

18 Q In regards to how the PSC II under the protocol that will
19 be followed, do I understand that the PSC II does not object
20 to the magistrate judge being able to completely review all
21 billing to make sure that it is fair and reasonable and
22 equitable?

23 THE COURT: I don't really care what the PSC's view
24 of the matter is. The Court will so order. That was the way
25 PSC I's compensation was reviewed and that is the way PSC II's

1 compensation will be reviewed by the magistrate judge. We
2 have the magistrate judge's law clerk -- what is your name,
3 sir?

4 MR. MOSES: Matt Moses.

5 THE COURT: -- here, and you'll probably be doing
6 the work, so listen carefully.

7 BY MR. ROBERSON:

8 Q In regards the Mulligan cases that are filed currently
9 before this Court, the ones that are subject to motions for
10 remand, is it your understanding that the PSC II filed a brief
11 in support of motions for remand?

12 A I believe that my firm even did, months ago we filed
13 motions for remand of our cases.

14 Q Isn't it true that The Mulligan Firm gave your firm
15 copies of our prior motions for remand without charge?

16 A I don't recall that but you might have. We -- early on
17 we had I thought a cordial relationship regarding a host of
18 matters.

19 Q Isn't it true that prior to the time that the PSC II
20 ordered -- argued any Lone Pine orders that The Mulligan Firm
21 had fully briefed that matter and given all of our briefing to
22 the PSC II members for free?

23 A You know what, I don't recall that. I know that I did
24 the Lone Pine order and I did it from scratch, that was a lot
25 of work, but you may have and I don't recall getting it but

Audet - cross - Roberson

25

1 you may have. I mean I wouldn't -- we received -- I remember
2 I asked a lot of people for help on Lone Pine and we received
3 a number of briefs from people on other issues in other cases.

4 Q Was one of them Mr. Miller's office?

5 A It may have been, I don't know, I don't recall.

6 Q And Mr. Miller's office is part of the PSC II, isn't that
7 correct?

8 A Yes, he is.

9 Q So, if I had supplied Mr. Miller a copy of The Mulligan
10 Firm's entire Lone Pine file prior to the time that you argued
11 and had a chance to brief that, then we would have supplied
12 you, the PSC II, for free the Lone Pine briefing that we had
13 previously done?

14 MR. WEISS: I object, Your Honor. That sounds like
15 testimony to me, not a question.

16 THE COURT: Overruled.

17 A I have no idea as I sit here today, if I knew I'd tell
18 you, I have no idea whether the Miller firm sent us anything.
19 My firm's practice is usually on core issues like Lone Pine,
20 summary judgment, you start from scratch and you don't copy
21 other's briefs. I always like to see other people's point of
22 view so I may have read it, I doubt it. I probably got ten
23 different briefs from different people none of which I thought
24 were as good as mine.

25 Q Did you do this brief work after December of 2006 on Lone

Audet - cross - Roberson

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1 Pine?

2 A I don't remember, you know, you would have to tell me, I
3 don't remember when I did Lone Pine, it may have been --

4 Q I'm only supposed to ask questions at the moment.

5 A I don't remember. We may have started the issue in
6 December, it may have gone to January '07, I just don't
7 recall.

8 Q Do you understand in mass tort aggregate settlements that
9 the settlements by their very nature have to be contingent
10 until each specific plaintiff has agreed to their specific
11 settlement amount?

12 A I don't know if I understand your question but I think it
13 is -- I think the answer is yes.

14 Q How many -- you've recently settled, is that correct,
15 your, the Audet partnership's firm?

16 A I believe I can say we have reached a tentative
17 settlement, correct.

18 Q And under that settlement, each individual plaintiff has
19 to receive what their settlement amount is going to be and be
20 given a fair and reasonable opportunity to turn that
21 settlement amount down, is that accurate?

22 MR. FIBICH: Your Honor, at this time I'm going to
23 object to the inner workings of Mr. Audet's settlement. All
24 the settlements that I'm aware of with respect to Eli Lilly
25 have been asked to be kept and are contractually obligated to

Audet - cross - Roberson

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1 be kept in strict confidence. I think this violates the
2 confidentiality provision of those agreements. I think this
3 also involves work product of Mr. Audet's clients and it is
4 rather far afield from the issues of our support of a
5 recommendation of a set aside in this case.

6 THE COURT: Overruled.

7 Q I'll be more specific.

8 A Yeah.

9 Q Are you familiar with ABA Rule 1.8 dealing with specific
10 conflicts of interest?

11 A I'm aware of avoiding conflicts of interest under
12 California rules, an ABA rule I can't quote you back.

13 Q All right, California Rule 1.8,800 dealing with aggregate
14 settlements, are you familiar with that rule?

15 A Yeah, I mean in general as with most California state
16 rules.

17 Q Would you agree when a case is part of an aggregate
18 settlement, it would be improper for any attorney following
19 California rules or otherwise to force a plaintiff to accept a
20 settlement amount without them having a fair and reasonable
21 opportunity to accept or reject that specific amount?

22 MR. FIBICH: Objection, Your Honor, relevancy.

23 THE COURT: Overruled.

24 A In general if you're asking me does a client have to
25 accept a settlement before you can settle a case, I agree with

Audet - cross - Roberson

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1 that, yeah, and I agree that applies to whether it is
2 aggregate or not and I believe, now I'm thinking about it,
3 there's a rule, yeah, I believe, yeah, you have to have the
4 client accept a settlement. Clearly I agree with you, yes.

5 Q And until a client accepts a settlement, can that
6 client's settlement amount be subject to a holdback or an
7 assessment?

8 A Until -- I believe the holdback is issued or applied when
9 the money comes in and I don't know when that would be with
10 respect to whether you're talking about conditional settlement
11 or the full release. Does that make sense?

12 Q Well, let me ask you this, if you have a group of clients
13 and you have an amount of money that's set aside to settle
14 the entire group of clients and you have an amount of money
15 that's set aside for a specific client, are we on the same
16 page?

17 A Yeah, I'm with you, okay. You've allocated a certain
18 amount to a particular client based on an aggregate
19 settlement?

20 Q Right. Until that person accepts or rejects that
21 settlement offer as to that specific amount of money for that
22 person, there really isn't a settlement yet, is there?

23 MR. FIBICH: I'll object to the form of the
24 question, Your Honor. It is vague and indefinite and calls
25 for speculation and I'll object to it being irrelevant. We're

Audet - cross - Roberson

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1 only asking for an assessment on settled cases. If there's
2 cases that are not settled and under the terms of some
3 settlement agreement there's money that goes back to Eli
4 Lilly, clearly that's not subject to the settlement.

5 THE COURT: Well, if the witness understands the
6 question, I'll permit him to answer.

7 A Let me try -- are you getting into the issue of is
8 there -- can there be an assessment like theoretically?

9 Q No, I want to know what you are -- you're the witness for
10 the PSC II, I want to know what the PSC II is asking for and
11 the reason is because when the money should be paid is part of
12 our objection to the Special Master's recommendation because
13 we felt it was not clear and I want the PSC II's witness to
14 state on the record whether or not they're seeking The
15 Mulligan Firm or any other law firm to pay money from a client
16 who hasn't given -- been given the opportunity to accept or
17 reject their settlement amount yet?

18 MR. WEISS: Your Honor, I think since we're --

19 THE COURT: Give your name.

20 MR. WEISS: Melvyn Weiss on behalf of the Executive
21 Committee of PSC II. The three of us are sitting here who are
22 the members of the Executive Committee and we will stipulate
23 that we will not ask for any money as a set aside where the
24 settlement for any individual is not final with respect to
25 that individual.

Audet - cross - Roberson

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1 MR. ROBERSON: With that stipulation, I'll withdraw
2 the question.

3 Q I just want to clear up a couple of things on the record,
4 then I'll be done and I appreciate your time, sir.

5 In regards to the discussions you had regarding The
6 Mulligan's Law Firm's items before the Special Master and
7 particularly defendant Eli Lilly's motion to compel, you were
8 not factually familiar with how many plaintiffs' fact sheets
9 The Mulligan Law Firm had produced to that point in time, were
10 you?

11 A I think I read the transcript, you guys had done I think
12 a good faith effort. My comment was not to cast aspersions
13 with the effort. I think it was the caseload and the timing
14 was just off. I remember you guys had a lot of cases and they
15 were all due at the same time and I don't think I even -- I
16 know I remember at the hearing I said I think it is unfair
17 regardless of your -- it was just unfair for you guys to have
18 to answer them all in one day -- in one month.

19 Q You're familiar that The Mulligan Law Firm requested an
20 extension of time prior to any of them being due?

21 A I believe you guys were good about it, I think you wanted
22 to raise it with the Special Master ahead of time, I think
23 that's right.

24 Q You are aware we received a rolling order from the
25 Special Master that allowed us to produce them over time?

Audet - cross - Roberson

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1 A My comment was not at all to cast aspersions at the
2 quality of your firm's response to them, that was not the
3 reference or the point of reference.

4 Q So, as you sit here today, you don't know if The Mulligan
5 Law Firm was late with even one fact sheet, do you?

6 A No, and my testimony was not meant at all as a slur on
7 the firm or Mr. Roberson, not at all, with respect to your
8 abilities. It was -- the reference was to point out that for
9 all of the cases, even those removed, you were utilizing the
10 benefit of what the PSC had set up in terms of conferences
11 with the Special Master and that's where you went to to get
12 the extension, not the fact that you had to get an extension.
13 I think -- I will testify that a number of PSC members needed
14 additional time. My firm didn't, we were always on time but a
15 lot of PSC members did, because of the caseload and the timing
16 needed additional time and the Special Master and Eli Lilly,
17 we all worked that out together.

18 Q And just one more set of questions; is my firm
19 participating with your firm currently in a California
20 litigation related to another medical product?

21 A I believe if I can --

22 MR. FIBICH: I'll object to the relevance of this,
23 Your Honor.

24 MR. ROBERSON: I'll have one follow-up, Your Honor.

25 THE COURT: I'll allow it with respect to the bias

Audet - cross - Roberson

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1 and credibility of the witness.

2 A Yeah.

3 THE COURT: Objection overruled.

4 A I believe you told me that we are and I was happy to hear
5 it, I believe I even said that we were happy to hear that his
6 firm was involved.

7 Q And isn't it true that in that litigation all state
8 participants are participating equally and have agreed there
9 will not be any assessment from the Court?

10 A That's news to me but I actually didn't know that. I was
11 invited on, again, that PSC because of my firm's reputation in
12 California. I didn't know that, I didn't know that. I know
13 there is a federal MDL order and I believe California
14 discussed at some point the possibility of an order. That's
15 as far as I know. I've never seen the order but there may be
16 one issued, I don't know.

17 Q And you're fueling your case for that type of litigation
18 in state court; is that correct?

19 MR. WEISS: I object. The witness has already
20 testified he has no recollection.

21 MR. ROBERSON: Withdraw the question. Pass the
22 witness.

23 MR. FIBICH: Two short questions.

24 THE COURT: Is there anybody on the phone who would
25 like to cross-examine the witness?

Audet - redirect - Fibich

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1 (No response.)

2 THE COURT: All right, then we'll have redirect.

3 REDIRECT EXAMINATION

4 BY MR. FIBICH:

5 Q Mr. Audet, you're familiar with the MDL Zyprexa
6 proceedings in state court in California and Indiana?

7 A I am very familiar with Indiana because my firm has 52
8 cases in Indiana state court.

9 Q And in the Indiana state court consolidated proceedings
10 is the Indiana state court judge following the rulings of
11 Judge Weinstein in the federal MDL?

12 A For the most part the judge has adopted Judge Weinstein's
13 rulings and Peter Woodin's -- excuse me, Special Master
14 Woodin's rulings. He reads them, talks to us some about them
15 but generally he's adopted them except with -- with the
16 exception of an assessment.

17 Q When you say with the exception of an assessment, there
18 is no state court assessment on state court cases by either
19 the California judge or the Indiana judge; is that correct?

20 A I can't speak to the California judge because our cases
21 have all been removed; Indiana, there is no assessment I
22 believe.

23 Q To your knowledge, are there any proceedings in which
24 there's a request for an assessment on state court proceedings
25 in Indiana?

Audet - recross - Roberson

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1 A Not today.

2 MR. FIBICH: Pass the witness, Your Honor.

3 THE COURT: Yes, recross.

4 MR. ROBERSON: If I may, yes, Your Honor, I'll limit
5 it to this specific topic.

6 RECROSS-EXAMINATION

7 BY MR. ROBERSON:

8 Q To your knowledge, your local firm in Indiana has not
9 filed any motion for an assessment, isn't that correct?

10 A I don't believe they have.

11 Q All right. To your knowledge, there's no rule within the
12 Indiana state rules or within Indiana state law that would
13 prohibit anyone from proceeding in front of the Indiana state
14 court seeking a common benefit assessment based on work done
15 elsewhere?

16 A You know what, I honestly don't know the Indiana rule, I
17 don't know. There may be a rule that doesn't allow -- I don't
18 know what the law is there.

19 Q And was it your testimony that you have no factual
20 knowledge as to the ongoing proceedings in California?

21 A With respect to this case, yeah, that's correct. I
22 believe all of our cases got removed. I believe your firm may
23 still have some, I don't know. I remember most of the cases
24 were removed from California and ours included.

25 Q All right. All right then, since you don't have any

1 knowledge, I won't ask you about California.

2 MR. ROBERSON: Pass the witness.

3 THE COURT: Thank you.

4 Does anybody on the phone wish to examine the
5 witness? If not, he'll be excused.

6 The witness is excused. Thank you very much.

7 THE WITNESS: Thank you, Your Honor.

8 THE COURT: Is there anything else that the PSC
9 wishes to present?

10 MR. FIBICH: That completes our evidentiary offer
11 today, Your Honor. However, the Court has raised an issue
12 with respect to whether or not the PSC intends to seek
13 compensation for the time that has occurred since basically
14 the 1st of this year and I will represent to the Court that I
15 along with Mr. Weiss may be the only members that were
16 involved in PSC I and PSC II so I have a history of
17 understanding the contributions that have been made by the
18 PSC.

19 Since January the 1st of this year PSC II has
20 expended a substantial amount of time and a substantial amount
21 of effort, which the Court I'm sure is aware of, with respect
22 to the challenges to the witnesses of the plaintiffs and our
23 challenges to the witnesses of Eli Lilly and Company under the
24 Daubert standards. All of the work that was done with
25 respect to our responses to those challenges and our

1 challenges to their experts as well as the depositions of the
2 experts that made declarations as well as the cross-
3 examination of the experts that have been tendered on behalf
4 of Eli Lilly and Company were done substantially in 2007.
5 That amount of work I think has inured to the benefit of the
6 settled cases.

7 If you listen to Mr. Roberson's questions, he seems
8 to be implying that we are seeking an assessment against cases
9 that are not settled because somehow the clients have not
10 accepted those settlements. If that's the case, then during
11 the period of 2007 for which time has not been collected nor
12 tendered to the Court in support of this assessment, that time
13 as well is inuring to the benefit of those clients and inuring
14 to the benefit of settlements. If in fact the Plaintiffs'
15 Steering Committee had not been successful with respect to the
16 Daubert challenges and the Court had ruled opposite of what it
17 did rule, then I think we would be in a real difficult
18 position with respect to his trying to settle cases or not
19 settle cases.

20 So, I make this statement to the Court to say that
21 primarily there is a substantial amount of time and a
22 substantial amount of money, I'm not sure Mr. Weiss or
23 Mr. Shaughnessy may know today but I know that we ran out of
24 money to pay experts and I know that those of us on the
25 Executive Committee have out of our own firms paid experts for

1 their time and effort in giving depositions. So, in addition
2 to the time that's been tendered to the Court in support in
3 Mr. Audet's declaration, I know that there's a substantial
4 amount of time. Whether or not this assessment is sufficient
5 to cover that, I don't know. I would tend to think it is not.

6 THE COURT: Thank you.

7 MR. WEISS: Melvyn Weiss, Your Honor. In addition,
8 my firm was appointed liaison counsel and as liaison counsel
9 we have continued to function in that role and as an example,
10 today's hearing, we had to disseminate notices to all the
11 interested parties and The Mulligan Firm was among those who
12 benefitted from that work so we anticipate making an
13 application for those services.

14 THE COURT: Is there anything else the PSC wishes --

15 MR. FIBICH: No, Your Honor.

16 THE COURT: Does anybody else wish to be heard?

17 MR. BURTON: Yes, Your Honor, it is Mark Burton from
18 Hirsch & Hirsch. I'd just like to point out there were
19 several firms that worked on PSC I and II or that just worked
20 on PSC I who were not fully compensated for their time on
21 PSC I because of the common benefit that was available at that
22 time and The Mulligan Firm doesn't seem to be taking into
23 account the benefit that accrued to them from PSC I even
24 though after PSC I was very successful in litigation when many
25 of the firms such as The Mulligan Firm became involved in the

1 litigation and I ask them -- I certainly want to make sure
2 that PSC II is appropriately compensated for the new work that
3 they did but if there is remaining funds available, that
4 anyone who did not receive compensation for their lodestars in
5 PSC I would potentially be able to recover that money if
6 there's available funds according to the discretion of the
7 magistrate, of course.

8 THE COURT: I'm not going to rule on that issue,
9 there's no such application before me and I see no point in
10 ruling on it.

11 Does anybody else wish to be heard?

12 Lilly is here, do you wish to be heard on this
13 issue?

14 MR. KING: No, I do not, Your Honor.

15 MR. ROBERSON: Your Honor, I don't know if the Court
16 wants to hear from The Mulligan Firm or not and when you ask
17 to be heard --

18 THE COURT: Excuse me, I will hear from anybody. I
19 made that clear. If you wish to be heard, I'll be happy to
20 hear you.

21 MR. ROBERSON: I guess the question I'd ask is how
22 the Court would wish to proceed? I obviously can make a
23 factual record on a question and answer basis or, like
24 Mr. Weiss and Mr. Fibich did, I can make arguments which under
25 Rule 11 have to be factually accurate obviously.

1 The Mulligan Firm would point out a few simple
2 items. First of all, the firm has always been straight up
3 with the PSC II and with this Court in regards to the issues
4 regarding jurisdiction, we have addressed this at every point
5 and we have addressed it up front. So, we think the
6 jurisdiction issue is properly before the Court and doesn't
7 need to be reargued, doesn't need to be rebriefed, however, we
8 did in our objections include an item to make sure that we
9 didn't waive any things. In that regard -- I apologize for
10 not turning the microphone on sooner for those on the phone.

11 In that regard, The Mulligan Firm would point out to
12 the Court that I did make one typo, the pinpoint cite for the
13 Harlon case was page 101 which is in the full opinion, not in
14 the concurring opinion. And also in that regard, The Mulligan
15 Firm would point out that the quote to the In Re: Agent Orange
16 case in the PSC II's response brief was attributed to the
17 Second Circuit, the pinpoint cite wasn't within that, the
18 Second Circuit's ruling, and I finally found the pinpoint
19 cite, it was in Your Honor's district court case and in that
20 case Your Honor actually in addressing the issue that the PSC
21 II brought up said in regards to cases that were not subject
22 to this Court's jurisdiction because they had opted out said
23 there were two items the Court could do, one would be a
24 percentage fee and the other one would be a fee where when
25 someone came to the document repository they were told how

1 much they were going to be charged ahead of time and then they
2 could decide whether or not they wanted to use the repository.
3 The Court said the second option was preferable and in that
4 regards the statement which is accidentally I believe mis-
5 cited has now been placed in full context and that's all The
6 Mulligan Firm ever wanted to do, we wanted to try to get an up
7 front agreement with the PSC II in regards to how we wanted to
8 move forward and we've tried on every occasion to be up front.

9 There are MDLs that this firm participates in and
10 when it does that, it gladly pays the fee. There are times
11 when our cases are removed from state court where we are in
12 state court because we want to be riding our own horse and
13 when it is our intention to be riding our own horse, in charge
14 of our own claims, we fight to maintain jurisdictional control
15 of our cases and the reason we've done that is because we
16 believe that is the manner in which we want to participate,
17 just as we're participating with Mr. Audet in Los Angeles,
18 California in another mass tort case right now where our
19 firm's case will be the first case to go to trial which is
20 currently set for March 1st.

21 We believe there are three issues in our
22 objections to the Special Master's recommendation; the Court
23 has made it clear that the magistrate judge will review all
24 items and so, therefore, we believe our due process objection
25 for lack of clarity in the Special Master's order has been

1 more than satisfied. Our second objection in regards to
2 ambiguity was the issue when is a fee received for the purpose
3 of having to be forwarded, the PSC II has clarified that; and
4 the jurisdictional item we just put on the table to make sure
5 that we don't waive it.

6 We understand and we expect the Court to sign either
7 one of the two orders that the PSC and now The Mulligan Firm
8 has forwarded to the Court. We believe the Court will sign
9 whichever order the Court so desires or make any alterations
10 that it desires and we've tried our best to make the record
11 clear and work in good faith with both this Court and Eli
12 Lilly and the PSC II at all phases despite the fact that at
13 times all sides have vehemently and appropriately tried to
14 move their case forward in the way they saw fit for their
15 particular clients. Thank you.

16 THE COURT: Thank you. Does anybody on the phone
17 wish to be heard?

18 (No response.)

19 THE COURT: The Court rules that all applications
20 for fees and expenses by PSC II will be ruled on by the
21 magistrate judge in due course with the opportunity of all
22 interested persons to challenge the amounts and to be heard.

23 PSC II may make application for fees and
24 disbursements without any chronological cutoff so long as
25 those fees and disbursements are made on behalf of all of the

1 claimants and potential claimants in this Zyprexa case.
2 Holdbacks will come into play only when payments are to be
3 made to the client and to the attorney for fees. I believe
4 that that was always the understanding. You can't have a
5 holdback if there's nothing to be paid yet.

6 As I understand it, there is a fund now established
7 for Lilly's payments from which the payments to the clients
8 and the attorneys will be made as individual cases are finally
9 settled with the consent of the individual clients. The
10 holdback will be one and a half percent from the fee to the
11 attorney and one and a half percent from the payment intended
12 to the client.

13 The parties are reminded that this Court's order of
14 December 5th, 2006, page 26, indicates that the Court's prior
15 ruling on fees remains in effect with respect to all cases now
16 in this Court whether or not a motion to remand has been made,
17 so long as that motion is not decided.

18 My present recollection was that that fee was
19 35 percent or less depending on the arrangement with the
20 individual clients, but you would have to look at the record,
21 I'm depending at the moment on my recollection.

22 Any payment of the one and a half percent from the
23 fee shall not be deducted from the payment to the client. But
24 I'm not characterizing that one and a half percent in any way
25 because there may be possible tax consequences of the

1 characterization and that's not an issue I now want to, or
2 will probably at any time want to, address.

3 The Court is very grateful to the Magistrate Judge
4 and the Special Master and the parties for the professional
5 way they've handled this matter. Is there any other issue you
6 want me to decide today?

7 MR. FIBICH: Your Honor, there's another issue, I'm
8 not sure it needs to be decided right now but there is the
9 issue that The Mulligan Firm raises when the issue of
10 assessment comes up and that is their application to seek a
11 writ on account of your failure to remand and there are
12 competing orders.

13 THE COURT: No, I'm not issuing any order permitting
14 an interlocutory appeal. I indicated that at a prior meeting
15 when there were some statements by some of the parties and I
16 suggested that there was a possible route through mandamus. I
17 plan to do nothing to expedite an appeal.

18 MR. ROBERSON: In that regards, Your Honor, the two
19 dueling orders that were submitted by the PSC II and The
20 Mulligan Law Firm that we spent a lot of time trying to
21 negotiate together so that we could present it as a unified
22 order in which Mr. Audet and I did agree that those
23 negotiations would be termed settlement agreement discussions
24 but we have presented to the Court dueling orders. Obviously
25 the Court just ruled that my last paragraph will not be part

1 of that order that the Court suggested in our last June
2 meeting but the Court did at that time offer to sign an order
3 so that The Mulligan Firm could seek a mandamus on this issue.
4 I believe the order that The Mulligan Firm submitted without
5 the last paragraph, in its three subparts, the items dealing
6 with the interlocutory order we've presented in good faith
7 with the understanding that the Court believed that this was
8 an item that the Second Circuit should have an opportunity to
9 review at this time and we believe that the order removing the
10 last paragraph which the Court has now obviously ruled on, we
11 believe that that order in good faith presents the idea as I
12 understood it at the time, not that the Court wanted our
13 plaintiffs to be delayed in regards to the undisputed amounts
14 but that the Court didn't want us to be able to pay out the
15 disputed amounts ahead of time and in the context of the
16 Court's statements we've proffered that order to the Court for
17 the Court's signature so that we could seek a mandamus and
18 that order enjoins us from distributing to ourselves or to our
19 clients any funds that would be subject to the Court's order
20 today that those monies have to go to this set aside.

21 THE COURT: The Court isn't asking you to remove
22 your request for an interlocutory appeal. Your request
23 remains a request. The order, however, will deny that request
24 that this Court certify.

25 So, the order should be reframed now by both

1 parties, if possible, in accordance with my rulings today on
2 the understanding that consenting to the form of the order is
3 not consent to the substance of the order. I think my rulings
4 are clear enough so that the parties can get together and
5 formulate an order. That order should include the denial of a
6 certificate for an interlocutory appeal and the other items I
7 indicated including what I've said about the fees being
8 subject to this Court's prior orders limiting those fees.

9 So, there are five points that have to be in that
10 order as I visualize it now based on my rulings today. Is
11 there anything further?

12 Submit that order please, if you can, within
13 48 hours. I'll modify it if necessary. Try to agree on the
14 form. If you can't, you can submit conflicting orders and
15 I'll modify them.

16 MR. ROBERSON: Your Honor, can I speak with
17 Mr. Audet for a second to see if we --

18 THE COURT: Yes.

19 (Pause.)

20 MR. ROBERSON: All right, we think that we want to
21 present two orders, one dealing just with the recommendation
22 and the set aside and the second dealing with the injunction
23 and the question is the plaintiffs represented by The Mulligan
24 Law Firm understand that the Court does not seek to enjoin the
25 ability of The Mulligan Law Firm to actually pay undisputed

1 amounts to our clients. Is that an accurate understanding of
2 the Court's order?

3 THE COURT: It is.

4 MR. ROBERSON: All right.

5 THE COURT: As long as you deduct from that payment
6 the one and a half percent. If your fee exceeds what the
7 Court has approved, you can pay any amount that's undisputed
8 by you to the client. It's not the intention of the Court to
9 harm the client in any way. The Court has throughout the
10 litigation attempted to expedite in every way possible prompt
11 and full payment to the client. I think the attorneys, who
12 are highly professional, and the Court fully agree on that.
13 We're here to see that the clients get paid as quickly as
14 possible and as much as possible.

15 So, if there is any dispute, as the attorneys are
16 paid by the Lilly money, they'll put the disputed amounts in
17 an escrow fund or pay it over to the fund for the PSC II,
18 depending on how you work it out.

19 MR. ROBERSON: Thank you, Your Honor. I think that
20 clarified the issues that we were discussing.

21 THE COURT: And you might try to articulate that in
22 your orders too.

23 MR. ROBERSON: Yes, Your Honor.

24 MR. AUDET: Your Honor, if I may, I apologize, I
25 know you want to leave.

1 THE COURT: No. I don't know why you think I want
2 to leave.

3 MR. AUDET: I'm sorry.

4 THE COURT: It is only 11 in the morning. I have a
5 number of other cases but the attorneys for the other cases
6 are perfectly happy to listen as long as you'd like to speak.

7 MR. AUDET: Okay. Thank you, Your Honor. Could I
8 just make one recommendation? There is basically the
9 recommendation and proposed order from Special Master Woodin
10 that could be signed by Your Honor whenever Your Honor wishes.

11 With respect to the issues we have in his order
12 that's going to take us 48 hours, the only recommendation
13 would be if the Court is so inclined because it is almost
14 mixing apples and oranges in terms of the issues on his
15 appeal --

16 THE COURT: I don't care what orders you want. You
17 want me to sign --

18 MR. AUDET: The recommendation order --

19 THE COURT: -- Special Master Woodin's order --

20 MR. AUDET: Yes.

21 THE COURT: -- and make it my order?

22 MR. AUDET: Correct, Your Honor.

23 THE COURT: I can do that immediately. If everybody
24 agrees, then we'll take care of whatever the other problems
25 are with a separate order to clarify. I will do whatever you

1 wish or you can put it all in one order, whatever you prefer.
2 What do you want?

3 MR. ROBERSON: I would request that you not sign
4 Special Master Woodin's recommendation because of the two
5 items that you've added. I will get together and I will --
6 whether we put it in two orders or one, I don't care, but I do
7 think that if perhaps the Special Master could help me here, I
8 would suggest that the Special Master, if it is allowed by the
9 Court, take the Court's ruling today and add the two items
10 that the Court has added just as new paragraphs since the rest
11 of the document with the objections are on the record and then
12 my order regarding the attorney fees will get to the Court
13 separately within, and I would request 72 hours since I am on
14 vacation.

15 THE COURT: 72 hours is granted. I'm not going to
16 sign the Special Master's recommendation. It will have to be
17 put in the form of an order.

18 MR. ROBERSON: Yes, Your Honor.

19 THE COURT: And you'll have to either agree or not
20 agree on all of the decisions I've made today.

21 Is there any other party or individual who wishes to
22 be heard?

23 (No response.)

24 THE COURT: The hearing is closed. Thank you very
25 much, counsel.

1 MR. SHUAGHNESSY: Thank you, Your Honor.

2 THE COURT: It is always a pleasure to see you.

3 Thank you very much, counsel.

4 72 hours. You'll have to order immediate copy
5 because I'll need it within 72 hours.

6 (End of proceedings.)

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